grantor had insured, it was held that the proceeds of the policy should go to the defrauded grantor, since he in equity was entitled to the property. *Bath, etc., Paper Co.* v. *Langley*, 23 S. C. 129. Again, in cases where a loss occurs on land which is the subject of an executory contract of sale, the prevailing view in America is that the vendee is entitled to the proceeds of a policy procured by the vendor. *Skinner, etc., Co.* v. *Houghton*, 92 Md. 68; *contra, King* v. *Preston*, 11 La. Ann. 95. In both of these instances a contractual relation is lacking between the company and the party ultimately receiving the proceeds.

The disinclination of the courts to relieve insurance companies from liability through a seeming technicality doubtless explains why the integrity of the general rule is not preserved; and where the proceeds are given to the person actually damaged substantial justice seems often attained. Since the company's liability, however, must be found in its contract, this desirable result can be reached only by adopting a broad though somewhat forced rule of construction, that *prima facie* the company contracts to indemnify not only the person taking out the policy but any other party beneficially interested at the time of loss. The view of the principal case, on the other hand, appears insupportable on any ground. It violates the terms of the policy by giving damages to one not damnified in a case where that result is not justified by reasons of substantial justice.

De Facto Corporations. — A state of facts which tests current definitions of *de facto* corporations was recently presented to the South Dakota courts. An attempt had been made to organize a banking corporation at a time when there was no statute authorizing it. Later the necessary statute was passed, but the bank, which had meanwhile held itself out as incorporated, took no steps to comply with the law. In actions involving the question of the bank's status the court, while denying the existence of any estoppel, rested its decisions on the ground that the bank was a *de facto* corporation. *State* v. *Stevens*, 92 N. W. Rep. 420, and *Mason* v. *Stevens*, *ibid.* 424.

The doctrine of *de facto* corporations is often said to be founded on estoppel. *Snyder* v. *Studebaker*, 19 Ind. 462. But it covers cases where there can be no estoppel, and is to be rested most satisfactorily on grounds of public convenience and business necessity. See *Society Perun* v. *Cleveland*, 43 Oh. St. 481; 36 Am. L. Reg. N. S. 18, 21. These reasons, however, apply with greater or less force in every case of pretended incorporation, and it is obviously necessary to restrain the unauthorized assumption of corporate powers by requiring more than proof of mere user before recognizing corporate existence *de facto*. The principle that the state is the sole source of corporate power is fundamental. The existence of a law under which the corporation might be created is therefore essential, for otherwise the claim of corporate existence is not only entirely unauthorized, but is against the implied prohibition of the state. Certain frequently quoted definitions have included only those two elements — the user of assumed corporate powers, and the statute. See *Methodist Church* v. *Pickett*, 19 N. Y. 482. The better decisions, however, require, as a third element, a *bona fide* attempt to organize under the statute. See *Finnegan* v. *Noerenberg*, 52 Minn. 239; *McLennan* v. *Hopkins*, 2 Kan. App. 260, 265. The principal case fulfills

the two former conditions, but partly fails as to the third. Whether the fact that the attempt to organize was not under the law, but previous to it, should prove fatal must depend on the reasons underlying the requirement. The courts in adopting this test have done more than lay down a convenient and expedient rule of restriction; they have emphasized the necessity of a recognition of the state's will, and an honest and reasonable effort to comply with it. How nearly exact this compliance must be is a question of degree, but it would seem that it should at all events have direct reference to the enabling law. It is true that in the principal case there had been a *bona fide* and public attempt to organize, but that attempt had been of no avail prior to the passage of the statute, and its effect cannot well be carried over. There was no attempt to comply with the statute; no attempt that might have resulted in the formation of a corporation *de jure*. There was a *quasi* recognition of the state as the source of corporate power, but no recognition of its authority to prescribe the mode of incorporation. On the whole, therefore, assuming as the court does that there was no estoppel, the decisions would seem to be incorrect. The bank has even less claim to *de facto* corporate existence than have those associations whose honest but seriously defective attempts to organize in compliance with statutes have been held to fail. *McLennan* v. *Hopkins, supra.*

RIGHT TO WITHDRAW FROM PUBLIC SERVICE. — That individuals or corporations engaged in callings of a *quasi*-public nature are, so long as they remain in the business, *ipso facto* subject to special duties to the public, is settled beyond dispute. These obligations may, moreover, be extended by judicial decision, without the aid of statute, to callings never before so regulated. *Nash* v. *Page*, 80 Ky. 539; see 15 HARV. L. REV. 309. The question whether the courts may take a further step and hold that the obligation of a public service company, independent of any express provision by its franchise, includes the duty of continuing business so long as, in the opinion of the court, the public need requires it, is suggested by a late case in a circuit court of Indiana. *City of Indianapolis* v. *Indianapolis Gas Co.*, 35 Chicago Leg. News, 165. The defendant corporation had for many years supplied Indianapolis with natural gas, acting under a city franchise which gave it the special privilege of laying its mains in the streets, and contained no provision restraining the defendant from abandoning the business at any time. Notice was given by the defendant that on a certain date it would cease to supply gas and would give up its use of the streets. At suit of the city a temporary injunction issued to prevent such action pending final decision.

The view of the court seems based upon a supposed public right that a business which supplies a definite public need shall not be terminated at the caprice of individuals or corporations. In the case of public service companies not acting under franchise, the recognition of this right would mean that an obligation not to withdraw from business if such withdrawal would seriously inconvenience the public, is part of the duty incidental to public service as such. Such a doctrine, even if declared by statute, might well be held violative of the Fourteenth Amendment of the Federal Constitution, as an unwarrantable deprivation of business liberty. See *State* v. *Goodwill*, 33 W. Va 179, 181, 183. BRANNON, FOURTEENTH AMENDMENT, 109 *et seq.*